United Nations CERD/C/POL/CO/20-21

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
19 March 2014

Original: English

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twentieth and twenty-first periodic reports of Poland*

1. The Committee considered the combined twentieth and twenty-first periodic reports of Poland (CERD/C/POL/20–21), submitted in one document, at its 2275th and 2276th meetings (CERD/C/SR.2275 and CERD/C/SR.2276), held on 10 and 11 February 2014. At its 2290th meeting, held on 20 February 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twentieth and twenty-first periodic reports of Poland. It appreciates the regularity with which the State party submits its periodic reports, which is in line with the reporting guidelines. The Committee also appreciates the emphasis in the report on the implementation of the previous recommendations of the Committee and the timely submission of the follow-up report. The Committee appreciates the constructive dialogue held with the large delegation of the State party. It also welcomes the updated common core document of the State party.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities in September 2012. It also notes that the State party reported the completion in August 2013 of the internal ratification procedure regarding the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

4. The Committee also welcomes legislative measures taken during the period under review, including:

(a) The new Foreigners Act facilitating a number of new and improved processes for residence and work permits for foreigners and establishing a system of non-custodial measures applied to foreigners in an irregular situation;

* Adopted by the Committee at its eighty-fourth session (3–21 February 2014).

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(b) The amendment of the Criminal Code in 2010 expanding the scope of hate crimes and penalizing activities such as producing, recording, purchasing, storing or transferring products whose contents promote fascist or other totalitarian State regimes, or incite national, racial or ethnic hatred;

(c) The enactment in December 2010 of the Anti-Discrimination Act implementing certain European directives on equal treatment and the adoption of the National Action Plan for Equal Treatment 2013–2016.

5. The Committee further welcomes the following measures:

(a) The establishment in the Ministry of Justice in December 2009 of the Department of Human Rights, which is in charge of reporting to the human rights treaty bodies;

(b) The regulations established by the Minister of National Education on 1 April 2010 admitting foreigners to public schools and providing them with additional classes, including remedial and language classes;

(c) The establishment of the human rights protection team within the Ministry of the Interior and Administration in December 2011 to monitor violations of human rights.

C. Issues of concern and recommendations

Relevant statistical data

6. The Committee regrets the absence of updated information on the ethnic composition of the population further to the 2011 national census, including relevant socioeconomic indicators to assess the equal enjoyment by all of the rights covered by the Convention (arts. 1 and 5).

While noting the relative homogeneity of the Polish population, the Committee requests that the State party provide detailed updated statistical data on the ethnic composition of the population in view of its revised reporting guidelines (CERD/C/2007/1). It requests the State party to share the findings of the post-census study on the national identity of the population. Regarding the latter, and in light of its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group (art.1, paras. 1 and 4), the Committee underlines the utmost importance of self-identification of individuals belonging to particular racial or ethnic groups.

The Convention in domestic legislation and the courts

7. The Committee notes that, in spite of the provision in article 91 of the Constitution of Poland that a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, there is an absence of cases of direct application of the Convention in domestic courts (art. 2).

The Committee recommends that the State party disseminate the content of the Convention as part of the training of judges and lawyers and apply the provision in the Constitution regarding the direct application of international agreements whenever appropriate.

Racial motivation

8. The Committee takes note that article 53, paragraph 2, of the Penal Code asks courts to take into account the motivation and conduct of the perpetrator when imposing penalties. However, the Committee is concerned that the Penal Code does not contain a provision expressly establishing racial motivation of a crime as an aggravating circumstance (art. 4).

The Committee recommends that the State party amend its criminal code, specifically making racial motivation of a crime an aggravating circumstance and allowing for enhanced punishment to combat the occurrence of such acts.

National human rights bodies

9. While taking note that the Human Rights Defender, reaccredited in 2012 with status A, is also the national preventive mechanism and the equality body, the Committee is concerned that the resources allocated to the Human Rights Defender may not be sufficient to cover all those important mandates. The Committee is also concerned that the Human Rights Defender has no statutory mandate to consider petitions from victims of racial discrimination concerning incidents occurring in the private area. Finally, the Committee regrets the absence of information on the impact of the work of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance established in February 2013 (arts. 2 and 6).

The Committee recommends that the State party provide adequate human and financial resources to the Human Rights Defender and ensure that it deals with racial discrimination both in the public and private areas. The Committee requests the State party to provide it with information on concrete results obtained by the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance through its framework programme of action and explain how the State party enhances coordination and synergy between all national human rights bodies.

Hate discourse and crimes

10. The Committee remains concerned by the persistence of racism and hate speech in sport. Hate speech on the Internet is still widespread and not effectively addressed. The Committee further expresses its concern about the information that at least four far-right organizations remain active in Poland despite the court decision in 2009 in Brzeg banning an organization which promoted fascism and totalitarian regimes. The Committee also notes with concern that, although in 2010 three persons were found guilty by the court in Wroclaw of launching a website promoting racial discrimination, that website is still functioning (art. 4).

Bearing in mind its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:

(a) Seek efficient means to combat racism in sport, including imposing fines on clubs for the racist acts of their supporters, and continue working with sporting associations to promote tolerance and diversity;

(b) Undertake further measures in conformity with its legislation and with article 4 of the Convention, in addition to the initiatives of the General Prosecutor, to tackle hate speech better on the Internet;

(c) Take action against websites promoting racial hatred;

(d) Ensure effective enforcement of the laws of the State party declaring illegal parties or organizations which promote or incite racial discrimination, in conformity with article 4 (b) of the Convention.

Racial discrimination in criminal justice

11. The Committee expresses its concern at the small number of racial discrimination cases referred to the courts, despite the increase in hate crimes. It is also concerned that, when a case is finally brought to court, the penalty imposed may not sufficient to have a deterrent effect and by the information that a number of victims of hate crimes, including

victims of abuse and ethnic profiling by law enforcement officers, are unwilling to report those incidents owing to doubts about the ability and interest of law enforcement officials in providing adequate recourse (arts. 4 and 6).

The Committee recommends that the State party continue its training programmes for prosecutors, police officers and judges on racially motivated offences and the importance of dealing with them with due seriousness. In light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the State party should remind public prosecutors of the general importance of prosecuting all racist acts and imposing sanctions that are proportionate to the gravity of such acts. Finally, the Committee recommends that the State party establish an independent body to receive complaints of police violence or abuse and take the necessary measures to ensure the recruitment of persons belonging to minority groups into the police.

Situation of national and ethnic minorities

12. Despite the efforts of the State party in promoting the rights of persons belonging to minorities, including implementation of the Act on National and Ethnic Minorities and Regional Languages, the Committee is concerned about ongoing negative stereotypes of national and ethnic minorities. The Committee is particularly concerned about racist behaviour against Roma, Jews and people of African and Asian descent. The Committee requested information on the status of the Slowincy and notes that, according to the response of the delegation of the State party, no such group as the Slowincy currently resides on the territory of Poland. (arts. 2, 4, 5 and 7).

The Committee recommends that the State party enhance its awareness-raising programmes among the general public on intercultural dialogue and tolerance and on the history and culture of ethnic and national minorities. In view of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party give serious consideration to the adoption of temporary special measures designed to secure the full and equal enjoyment of human rights and fundamental freedoms, including the faithful implementation of the provisions of the Convention, for persons belonging to minority groups. The Committee also requests that the State party provide information about the Slowincy in Poland.

Situation of the Roma community

13. The Committee takes note of a number of results achieved through the programme for the Roma community in Poland for the period 2004–2013. However, the situation of the Roma is still worrying in terms of the high rate of school dropout, the large number of Roma children in special schools, poor living conditions, including de facto segregation in housing, threats of eviction and the limited number of Roma entering the labour market. The Committee is further concerned by the continuing negative stereotypes and discrimination regarding this community (arts. 2–7).

In light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party intensify its special measures to promote the economic, social and cultural rights of the Roma community, ensuring that all policies and programmes affecting them are designed, implemented, monitored and evaluated with the full participation of organizations representing them. In this regard, the State party should speed up the adoption of the new programme for the Roma community for the period 2014–2020 and ensure that concrete measures are taken to improve Roma living conditions, including access to

mainstream and higher education, adequate housing, health services and employment. Further measures should be taken to address the root causes of the poverty and marginalization of the Roma community, including any indirect discrimination they may face, and promote the rights of Roma women, often subject to double discrimination, bearing in mind general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

Situation of the Jewish community

14. Considering the tragic experience of the Jewish community in Poland and its virtual extermination, particularly during the occupation in the Second World War, the Committee expresses concern about the continuing prevalence of anti-Semitic sentiment and incidents in Poland, despite numerous activities undertaken to counter this. It is also concerned about the information it has received regarding the attitude of certain Polish authorities who have discontinued investigations in some cases of anti-Semitism on the grounds that the victim did not belong to the Jewish community (arts. 4 and 6).

Bearing in mind the tragic experience of the Jewish community in Poland, particularly during the occupation in the Second World War, the Committee recommends that the State party intensify its efforts to combat anti-Semitism and efficiently prosecute its manifestations by sensitizing prosecutors and judges to the need to apply the law and the Convention proactively.

Discrimination against non-citizens

15. The Committee is concerned about the continuing practice of detaining minors with their parents in guarded centres for asylum seekers, which prevents those minors from having access to an appropriate education. The Committee is further concerned about information that non-citizens, in particular migrants and refugees, face discrimination in the field of employment, that they are reportedly paid lower salaries, work longer hours without official contracts and also face discrimination in housing, as landlords are often reluctant to let a flat to foreign nationals or to sign agreements with them (arts. 5 and 6).

The Committee recommends that the State party refrain from detaining asylum-seeking minors and fully implement the revised Act on the Education System to address their educational difficulties by providing language classes or tutorial assistance in their mother tongue. In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party remove obstacles to the enjoyment of economic, social and cultural rights by non-citizens and strengthen its efforts to apply its legislation and the Convention to combat direct or indirect racial discrimination against them, in particular with regard to education, housing and employment.

D. Other recommendations

Ratification of other treaties

16. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular those treaties, the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

17. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, which was held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultation with organizations of civil society

18. The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of the protection of human rights, in particular in combating racial discrimination, in connection with the implementation of the present concluding observations and the preparation of the next periodic report.

Dissemination

19. The Committee commends the State party for its efforts and recommends that its reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports continue to be widely disseminated in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

20. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the recommendations contained in paragraphs 9, 10 and 13 above within one year of the adoption of the present conclusions.

Paragraphs of particular importance

21. The Committee also wishes to draw the attention of the State party to the particular importance of its recommendations in paragraphs 8, 14 and 15 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

22. The Committee recommends that the State party submit its twenty-second to twenty-fourth periodic reports in a single document, due on 4 January 2018, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see the harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para.19).